

February 4, 2013

Mr. Jesse Mainardi
The Sutton Law Firm
150 Post Street, Suite 405
San Francisco, CA 94108

Re: Your Request for Advice
Our File No. A-13-005

Dear Mr. Mainardi:

This letter responds to your request for advice on behalf of former Assemblymember Nathan Fletcher regarding campaign provisions of the Political Reform Act (the “Act”).¹

QUESTION

May the Fletcher officeholder account accept contributions, for a short period of time (until March 3, 2013), in order to pay outstanding invoices for officeholder expenses incurred before December 3, 2012, when Assemblymember Fletcher’s term of office ended?

CONCLUSION

Yes, the Fletcher officeholder account may accept contributions at this time, under applicable limits, for the sole purpose of paying off debts incurred for officeholder expenses before Assemblymember Fletcher’s last day in office.

FACTS

Assemblymember Fletcher served in the State Assembly from December 2008 until December 3, 2012, and opened the Assemblyman Fletcher 2010 Officeholder Account (the “Officeholder Account”) after being re-elected in 2010. By mid-2012, the Officeholder Account had accrued a number of expenses in excess of its cash on hand (i.e., the Officeholder Account had debt). All of these expenses were associated with holding office, and thus properly accrued to the Officeholder Account.

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

In the late summer and early fall of 2012, the Officeholder Account had secured a number of pledges to make contributions in sufficient amounts to pay off the net debt. All pledged contributions were within both the per source and aggregate contribution limits set forth in Section 85316(b) as updated by Regulation 18545(c) and (d).

Due to both Assemblymember Fletcher's legislative duties and the time it takes for certain organizations to process their political contributions, the Officeholder Account was unable to collect the pledged contributions before Assemblymember Fletcher left office on December 3, 2012, leaving the Officeholder Account with approximately \$30,000 in debt. Nonetheless, the individuals and entities which had previously pledged contributions remain willing and able to make those contributions assuming that doing so does not violate state law. Assemblymember Fletcher would like to accept the previously pledged contributions in order to pay off the debt, and to close the Officeholder Account within 90 days of leaving office (March 3, 2013), as required by Regulation 18531.62(g)(5).

ANALYSIS

Section 85316, added to the Act by Proposition 34 in 2000, prohibits state candidates from raising contributions after an election except as necessary to pay net debts outstanding from the election. The section was amended in 2006 to permit state officeholder accounts, within limits.

Section 85316 provides in part:

“(a) Except as provided in subdivision (b), a contribution for an election may be accepted by a candidate for elective state office after the date of the election only to the extent that the contribution does not exceed net debts outstanding from the election, and the contribution does not otherwise exceed the applicable contribution limit for that election.

(b) Notwithstanding subdivision (a), an elected state officer may accept contributions after the date of the election for the purpose of paying expenses associated with holding the office provided that the contributions are not expended for any contribution to any state or local committee. Contributions received pursuant to this subdivision shall be deposited into a bank account established solely for the purposes specified in this subdivision.

(1) No person shall make, and no elected state officer shall receive from a person, a contribution pursuant to this subdivision totaling more than the following amounts per calendar year:

(A) Three thousand dollars (\$3,000) in the case of an elected state officer of the Assembly or Senate . . .

(2) No elected state officer shall receive contributions pursuant to paragraph (1) that, in the aggregate, total more than the following amounts per calendar year:

(A) Fifty thousand dollars (\$50,000) in the case of an elected state officer of the Assembly or Senate . . .”

The state officeholder account limits are adjusted for changes in the consumer price index in January of every odd year, and the limits applicable for 2011-2012 for a state legislator’s officeholder account were \$3,200 per contributor and \$53,900 aggregate from all sources. (Section 85316(b)(4); Regulation 18545(c) and (d).)

Regulation 18531.62 sets forth rules for establishing state officeholder accounts and provides as follows in subdivision (g) about terminating officeholder accounts and committees:

“(g) Terminating Officeholder Accounts and Committees.

(1) The officeholder may not accept contributions after the officeholder’s term of office ends or the date he or she leaves that office, whichever is earlier.

(2) The officeholder may redesignate the officeholder account as an officeholder controlled committee for a future term of the same office by amending the statement of organization for the committee to reflect the redesignation for the future term of office prior to the date the officer’s term of office ends.

(3) An officeholder may redesignate officeholder funds in the redesignated officeholder account as officeholder funds for the new term of office, subject to the limitations in subdivision (e)(4).

(4) Once the officeholder’s term of office ends or he or she leaves that office, whichever is earlier, the officeholder may only use his or her officeholder funds for the following purposes:

(A) Paying outstanding officeholder expenses.

(B) Repaying contributions to contributors to the officeholder account.

(C) Making a donation to a bona fide charitable, educational, civic, religious, or similar tax-exempt, nonprofit organization, if no substantial part of the proceeds will have a material financial effect on the officeholder, a member of his or her immediate family, or his or her committee treasurer.

(D) Paying for professional services reasonably required by the officeholder controlled committee to assist in the performance of its administrative functions.

(5) The officeholder shall terminate the officeholder controlled committee within 90 days of the date the officer’s term of office ends or he or she leaves that office, whichever is earlier. The Executive Director may for good cause extend the termination date or permit the candidate to reopen the account.”

Assemblymember Fletcher’s term of office ended on December 3, 2012. At that time the Officeholder Account had approximately \$30,000 in debt. Assemblymember Fletcher would like to accept contributions into the Officeholder Account at this time in order to pay off the debt and to close the account within 90 days of leaving office (March 3, 2013).

Section 85316(a) prohibits candidates from raising more campaign funds after the date of an election, but specifically provides that a committee may raise more funds after an election, subject to applicable limits, if necessary to permit the committee to pay off its net debts outstanding. It is common for campaign committees to end an election with debt and to conduct limited post-election fundraising to pay off the debt. Section 85316(b) does not specifically address an officeholder account with debt outstanding at the end of an officeholder's term, presumably because this situation occurs less frequently.

Regulation 18531.62(g) provides the general rules for terminating state officeholder accounts. It specifies that an officeholder may not accept contributions to his or her officeholder account after the officeholder's term of office ends or the date he or she leaves that office, whichever is earlier. The regulation states that the officeholder account should be terminated within 90 days of that time. If the state officeholder account has outstanding debt, however, analogizing to Section 85316(a), it is reasonable to permit the officeholder to raise contributions, under the officeholder account limits, for a short period of time to pay off outstanding debt. Such an interpretation of the Act ensures that committees can honor their commercial and contractual obligations. Further, we note that Regulation 18531.62(g)(5) permits the reopening of officeholder account committees in certain circumstances. This provision is similar to that in Regulation 18404.1(e) which permits campaign committees to request an extension of time from the executive director to comply with the committee termination requirements so they can remain open to raise funds to pay off net debts outstanding.

Turning to your facts, we agree that the Fletcher Officeholder Account may accept contributions at this time for the sole and limited purpose of paying off debts incurred for officeholder expenses before Assemblymember Fletcher's last day in office. Assemblymember Fletcher anticipates accepting the contributions and paying off the debt by March 3, 2013, the deadline for termination of the Officeholder Account. This will permit the Officeholder Account to accept contributions for a short period of time so it can pay outstanding creditors.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Zackery P. Morazzini
General Counsel

By: Hyla P. Wagner
Senior Counsel, Legal Division

HPW:jgl